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**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA**

KEITH I. SCHORR and SUSAN
SCHORR, in their own right and
as personal representatives of the
Estate of RYAN K. SCHORR,
Plaintiffs,

v.

WEST SHORE REGIONAL POLICE
DEPARTMENT, HOWARD
DOUGHERTY, CUMBERLAND
COUNTY, and HOLY SPIRIT
HOSPITAL,

Defendants.

JURY TRIAL DEMANDED

NO.: 1:CV-01-0930

HONORABLE YVETTE KANE

FILED
HARRISBURG, PA

MAY 14 2003

MARY E. D'ANDREA, CLERK
Per
Deputy Clerk

PRETRIAL MEMORANDUM OF DEFENDANTS
CUMBERLAND COUNTY AND HOLY SPIRIT HOSPITAL

Date conference was held by counsel: Witness/exhibit lists were exchanged on
May 6, 2003.

A. Federal Jurisdictional Statement

Plaintiffs assert claims under the United States Constitution and federal statutes. There is also a pendent state law claim against Holy Spirit Hospital (“HSH”).

B. Summary Statement of Facts and Contentions as to Liability

Plaintiffs’ decedent, Ryan K. Schorr (“Decedent”) was diagnosed with bipolar psychiatric disorder. Decedent was not compliant with the prescribed treatment for his bipolar disorder by failing to take his prescribed medication. On the contrary, Decedent would use illegal drugs such as LCD, marijuana, cocaine and ecstasy.

On November 18, 2000, Decedent’s roommate, Matthew Gaumer, and Decedent’s mother sought the assistance of crisis intervention workers at HSH and sought to involuntarily commit Decedent. A Section 302 warrant was issued and served by West Shore Regional Police Department (“WSRPD”). Two police officers took Decedent to the emergency room of HSH where he was examined by crisis physician David Spurrier, M.D. Following the examination, Decedent was placed in a seclusion room which locked from the outside. Crisis intervention

worker, Candice Highfield, entered the room to read Decedent his legal rights pursuant to Section 302 when Decedent pushed Ms. Highfield backward and ran from HSH.

Following Decedent's elopement from HSH, he spent time at a local convenient store drinking soft drinks and reading pornography. Decedent called the Harrisburg Hilton Hotel to send a vehicle to pick him up, and the Harrisburg Hilton Hotel complied. After a brief time at the hotel, Decedent left and walked down Front Street in Harrisburg until he came upon 907 North Front Street where he found individuals on the porch watching the Thanksgiving Day parade. The home at 907 North Front Street is owned by the Blair Family who gave Decedent a windbreaker jacket. Following that encounter, Decedent returned to his home where the WSRPD attempted to take him back into custody. However, a struggle ensued between Decedent and the two police officers. Decedent was shot and killed by the police officers.

Plaintiffs contend that Cumberland County (the "County") and HSH violated Decedent's civil rights. Plaintiffs also claim that HSH was negligent and grossly negligent in its care of Decedent.

Plaintiffs make constitutional claims against WSRPD and Chief Howard Dougherty regarding their handling of the incident and their training, policies and procedures.

C. Comprehensive Statement of Undisputed Facts as Agreed to by Counsel

No statement has been agreed to by counsel.

D. Description of Damages

See, Plaintiffs' Pretrial Memorandum.

E. Names and Addresses of Witness and Experts

Defendants' Liability Expert:

Frederick G. Roll, MD, CHPA-F, CPP
Roll Enterprises, Inc.
20648 Black Fox Lane
Morrison, CO 80465

Abram M. Hostetter, M.D.
Hershey Psychiatric Associates
928 East Chocolate Avenue
Hershey, PA 17033-1215

Robert P. Wolf
1939 Rt. 70 East, Ste. 120
Cherry Hill, NJ 08003

Saralee Funke, M.D.
Forensic Pathology Associates, Inc.
1200 S. Cedar Crest Blvd.
2nd Flr. GSB
Allentown, PA 18103

Theodore John Siek, Ph.D.
Analytic Bio-Chemistries
1680 D. Loretta Avenue
Feasterville, PA 19053

Parties:

Keith I. Schorr
c/o Stephen Pennington, Esquire

Susan Schorr
c/o Stephen Pennington, Esquire

Witnesses:

Charles Sterling, Security Manager
Holy Spirit Hospital

Mercedes Briscese, Crisis Intervention Worker
Holy Spirit Hospital

Steve Bucciferro, Administrative Director of Mental Health Services
Holy Spirit Hospital

Candice Highfield, Crisis Worker
Holy Spirit Hospital

Cory Graby, (former Security Officer)
127 N. Lancaster Street
Annville, PA 17003

Carol Joerger, R.N.
Holy Spirit Hospital

Rodney Buckles, Emergency Dept. Technician
Holy Spirit Hospital

Pat Smith, R.N.
Holy Spirit Hospital

Gary W. Berresford
c/o Mark Emery, Esquire

Harry S. Hart
c/o Mark Emery, Esquire

Matthew Gaumer
1615 North Second Street
Apt. 3
Harrisburg, PA

Heidi L. Bowen
RD #1, Box 158A
Tionesta, PA 16353
(parents address - 3600 Quarry Drive
Harrisburg, P 17013 - 651-1548)

Peggy Jones, Manager (current manager)
UniMart
38 Erford Road
Camp Hill, PA

Kristine Dennis, Reservations Supervisor
Harrisburg Hilton
1 North Second Street
Harrisburg, PA

Jason Brown, Security Officer
Harrisburg Hilton
181 Bowie Drive
Grantville, PA

Nathan Graham, (former) Front Desk Clerk
150 Plainview Drive
Harrisburg, PA 17112

Richard & Christine Bair
907 North Front Street
Harrisburg, PA

Detective Simon Jackson
Cumberland County Criminal Investigation Division
One Courthouse Square
Carlisle, PA 17013

Jeffrey Franks, Deputy Commander
Cumberland County Criminal Investigation Division
One Courthouse Square
Carlisle, PA 17013

Defendants Holy Spirit Hospital and Cumberland County reserve the right
to call any and all witnesses identified by Plaintiffs and Defendant West
Shore Regional Police

F. Summary of Testimony of Each Expert Witness

Frederick G. Roll, MD, CHPA-F, CPP

Mr. Roll is a healthcare security specialist who will opine that HSH operated within the security standard of care for the general emergency department at the time Decedent eloped.

Abraham M. Hostetter, M.D.

Dr. Hostetter is a board certified psychiatrist who will provide testimony that in his expert opinion there is no evidence of gross negligence or failure to meet the standard on care of the part of HSH in the treatment of Decedent. He will opinion that the elopement of Decedent from HSH was unpredictable. He will testify that Decedent's behavior occurred through the intoxicating level of amphetamines (Ecstasy) in Decedent's system.

Robert P. Wolf

Mr. Wolf is a certified rehabilitation economist. Mr. Wolf will opine that based on historical earnings of Decedent, he sustained no quantifiable economic losses.

Saralee Funke, M.D.

Dr. Funke is a forensic pathologist who will provide testimony regarding her autopsy report on Decedent.

Theodore John Siek, Ph. D.

Dr. Siek is a toxicologist who performed a toxicology survey on Decedent's blood and urine. He will opine that the blood concentration of MDMA found in Decedent's blood was in a range which is acutely toxic and capable of significant mental disturbances in human subjects.

G. Special Comment on Pleadings and Discovery

None.

H. Summary of Legal Issues Involved and Legal Authorities Relied upon

1. *Respondeat Superior.*

In the case of Monell v. Department of Social Services, 436 U.S. 658, 691 (1978), the United States Supreme Court held that a municipality or other local government unit cannot be held liable under §1983 pursuant to the theory of *respondeat superior*.

2. Liability Under §1983.

In order to establish liability under §1983 against a local government unit, plaintiff must demonstrate: (1) the deprivation of a constitutional right; (2) the action was taken pursuant to customer policy of the local government unit; and (3) that such action was the cause of the deprivation. Id., 496 U.S. at 691.

3. Private Hospitals are not State Actors when Involved with Involuntary Commitments.

This Court has held in Janicsko v. Pellman, 774 F. Supp. 331 (M.D. Pa. 1991) that the involuntary commitment of the mentally ill by private physicians and hospitals under the Pennsylvania Mental Health Procedures Act (“MHPA”) is not “a function compelled by or sufficiently connected to state directives to attribute those actions to the state.”

4. Immunity from Liability Set Forth in the MHPA.

The legislature has established a degree of immunity from civil and criminal liability for those engaged in the treatment of mentally ill. See, generally 50 P.S. §7114. This section of the MHPA provides immunity from civil and criminal liability for those engaged in treatment of the mentally ill under the

MHPA, absent a finding of “wilful misconduct” or “gross negligence” on their part.

5. Comparative Negligence.

Was the Decedent contributorily negligent in failing to take his prescribed medication and/or substitute the use of illegal controlled substances which ultimately caused the situation that lead to his death?

6. Assumption of Risk.

The Defendant claims that the Decedent assumed the risk of his injury. The elements of assumption of the risk are that the Decedent fully understood the specific danger that caused his injury, appreciated its nature and extent, and voluntarily chose to encounter it under circumstances indicating a willingness to accept the specific danger. Pa. Standard Jury Instruction 304.

7. Causation.

- a. Defendant HSH’s alleged gross negligence.
- b. Plaintiffs’ comparative/contributory negligence.

I. Stipulations Desired

Counsel has exchanged exhibits and it is believed that counsel can stipulate to the authenticity and admissibility of Decedent's medical records, autopsy report, toxicology report and the investigative chronology of events prepared by Cumberland County's criminal investigation unit.

J. Estimated Number of Trial Days

Six.

K. Other Matter Pertinent to the Case to Be Tried

Defendants' Motions for Summary Judgment are outstanding before the Court.

L. Exhibit Form

See, Appendix A.

M. Special Verdict Questions

See, Appendix B.

N. Defense Counsel's Statement Regarding Local Rule 16.2

See, Appendix C.

O. Certificate of Compliance with Local Rule 30.10

See, Appendix C.

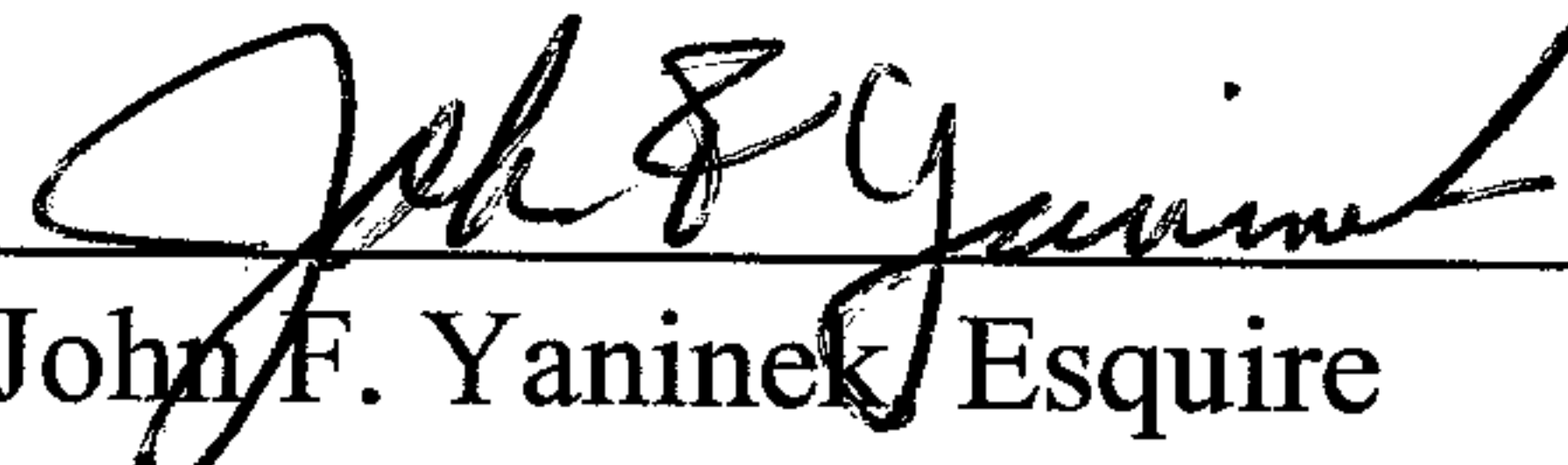
P. Requests for Findings of Fact and Law for Non-jury Trials

Not applicable.

Respectfully submitted,

METTE, EVANS & WOODSIDE

By:



John F. Yaninek Esquire

Sup. Ct. I.D. No. 55741

3401 N. Front Street

P. O. Box 5950

Harrisburg, PA 17110-0950

(717) 232-5000

Attorneys for Defendants Holy Spirit

Hospital and Cumberland County

DATED: May 14, 2003

APPENDIX A

CLERK'S EXHIBIT LISTING

JUDGE: Judge Yvette Kane
Abbreviated Name of Case: Schorr v. Holy Spirit Hospital, Cumberland County, et al.
Case No. 1:CV-01-930

Name of party submitting this list: Defendants Holy Spirit Hospital and Cumberland County

(Judge's trial notes: Vertical lines equal ditto marks throughout; W equals witness)

Exhibit Initial and No.	Description of Object or Item	Identified in Court	Date Admitted
D1	Grand Jury Investigative Report		
D2	Time line of events as prepared by Cumberland County Criminal Investigation Division		
D3	Investigative Report from Cumberland County Criminal Investigation Division with attached statements		
D4	Supplemental Incident Report prepared by Detective Jeffrey Franks		
D5	Supplemental Incident Report prepared by Detective John J. Sancenito		
D6	Documents and reports prepared by the Cumberland County Criminal Investigation Division relating to the investigation of the death of Ryan Schorr		
D7	Information and materials collected by the Cumberland County Criminal Investigation Division relating to the investigation of the death of Ryan Schorr		
D8	Autopsy Report		

Exhibit Initial and No.	Description of Object or Item	Identified in Court	Date Admitted
D9	Toxicology Report		
D10	Holy Spirit Hospital Medical Records 5/11/95-6/1/95 - 302 Admission		
D11	Holy Spirit Hospital Community Mental Health Center Records 6/16/95-11/18/00		
D12	Holy Spirit Drug and Alcohol Outpatient Services Records 10/31/95-1/6/96		
D13	Holy Spirit Hospital Medical Records - 6/16/99 Emergency Room Treatment		
D14	Holy Spirit Hospital Medical Records - 6/17/99 Emergency Room Treatment		
D15	Holy Spirit Hospital Medical Records 9/17/99 Emergency Room Treatment		
D16	Holy Spirit Hospital Medical Records - 9/30/99-10/1/99 - Voluntary Admission/Discharged AMA		
D17	Holy Spirit Hospital Drug & Alcohol Outpatient Services Records 7/6/99 - 6/21/00		
D18	Holy Spirit Hospital Medical Records 11/18/00		
D19	Hershey Medical Center 5/24/99 Emergency Room Treatment		
D20	Edgewater Psychiatric Center Medical Records 5/24/99-6/14/99 302 Admission		

Exhibit Initial and No.	Description of Object or Item	Identified in Court	Date Admitted
D21	Edgewater Psychiatric Center Medical Records 6/17/99-7/1/99 302 Admission		
D22	Shippensburg University school records		
D23	Susquehanna Township school records		
D24	Tax Returns and W-2's of Ryan Schorr		
D25	Prescriptions found at Ryan Schorr's home on 11/18/00		
D26	Videotape - security videotape of Schorr at Holy Spirit Hospital dated 11/18/00		
D27	Videotape - West Shore Regional Police Shooting Scene		
D28	Videotape - Unimart security tape 11/18/00		
D29	Audio cassette - Police/911 Radio & Telephone Recording		
D30	Audio cassette - Spliced tape - 911 call/Police Radio Transmissions		
D31	Audio cassette - Re-recording from Answering Machine of Ryan Schorr Residence - 445 Meadow Drive		
D32	Audio cassette - Richard and Christine Bair		
D33	Transcript of taped statement of Matthew Gaumer dated 11/28/00		
D34	Deposition of Matthew Gaumer		
D35	Handwritten note from Heidi Bowen to Ryan Schorr		

Exhibit Initial and No.	Description of Object or Item	Identified in Court	Date Admitted
D36	Holy Spirit Hospital Position Description - Safety Officer		
D37	Holy Spirit Hospital Position Description - Crisis Worker		
D38	Holy Spirit Hospital Position Description - Registered Nurse		
D39	Holy Spirit Hospital Policy - Management of Psychiatric Patient ER		
D40	Holy Spirit Hospital Policy - Management of Acutely Disturbed Patient		
D41	Holy Spirit Hospital Policy - Crisis Intervention Policy & Procedure		
D42	Holy Spirit Hospital Policy - Appendix A Crisis Intervention Service		
D43	Holy Spirit Hospital Crisis Intervention Daily Log dated 11/18/00		
D44	Holy Spirit Hospital Safety Manual Red Alert Policy		
D45	Holy Spirit Hospital Chart of Total Number of 302 Commitments 1998-2000		
D46	Procedures for 302 Commitment		
D47	Survey - 302 Questions by Holy Spirit Hospital		
D48	Incident Report - Red Alert dated 6/17/99 re: Ryan Schorr		
D49	Holy Spirit Hospital 302 Mental Health Elopements -1998-2000		
D50	Holy Spirit Hospital Red Alert Training Materials		
D50	JCAHO Reports regarding Holy Spirit Hospital		

Exhibit Initial and No.	Description of Object or Item	Identified in Court	Date Admitted
D52	Cumberland/Perry Counties Mental Health/Mental Retardation Program Master Contract/Letter of Agreement with Holy Spirit Hospital 6/1/00 - 6/1/01		
D53	Cumberland/Perry Counties Mental Health/Mental Retardation Program Contract with Holy Spirit Hospital (1999)		
D54	Statement of Carol Joerger, R.N.		
D55	MIIX Event Report Form dated 11/18/00		
D56	Handwritten Statement of Rodney L. Buckle		
D57	Handwritten Statement of Cory Graby		
D58	Incident Report - Security Standby dated 11/18/00		
D59	Incident Report - Red Alert dated 11/18/00		
D60	Handwritten Statement of David J. Spurrier, M.D.		
D61	Handwritten Statement of Candice Highfield		
D62	Deposition of Carol Joerger, R.N.		
D63	Deposition of Candice Highfield		
D64	Deposition of Cory Graby		
D65	Deposition of Steve Buccifero		
D66	Deposition of Mercedes Brsicise		
D67	Deposition of Charles Sterling		

Exhibit Initial and No.	Description of Object or Item	Identified in Court	Date Admitted
D68	Holy Spirit Hospital Security Policy - Restraints/Protective Devices		
D69	Holy Spirit Hospital ECU Seclusion Room Policy		
D70	Deposition of Sylvia Herman, Cumberland County Designee		
D71	Deposition of Thomas Hayes		
D72	Deposition of Gary Berresford w/exhibits		
D73	Deposition of Harry S. Hart, Jr.		
D74	Deposition of Howard Dougherty		
D75	Deposition of Susan Schorr w/exhibits		
D76	Deposition of Keith Schorr w/exhibits		
D77	Deposition of Ira Somerson (plaintiff's expert)		
D78	Deposition of Suzanne Vogel-Scibilia, M.D. (plaintiff's expert)		
D79	Expert Report of Abram M. Hostetter, M.D. dated 11/20/02		
D80	CV of Abram M. Hostetter, M.D.		
D81	Expert Report of Frederick G. Roll dated 11/20/02		
D82	CV of Frederick G. Roll		
D83	Expert Report from Robert P. Wolf, Ed.D., M.B.A. dated 11/7/02		
D84	CV of Robert P. Wolf, Ed.D., M.B.A.		
D85	CV of Theodore John Siek, Ph.D.		

Exhibit Initial and No.	Description of Object or Item	Identified in Court	Date Admitted
D86	CV of Saralee Funke, M.D.		
D87	Investigative Photographs of Cumberland County CID of Holy Spirit Hospital		
D88	Investigative Photographs of Cumberland County CID of drug paraphernalia seized at Schorr residence		
D89	Investigative Photographs of Cumberland County CID of Schorr time line locations		
D90	Investigative Photographs of Cumberland County CID of 445 Meadow Drive, crime scene		

APPENDIX B

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA**

KEITH I. SCHORR and SUSAN
SCHORR, in their own right and
as personal representatives of the
Estate of RYAN K. SCHORR,
Plaintiffs,

v.

WEST SHORE REGIONAL POLICE
DEPARTMENT, HOWARD
DOUGHERTY, CUMBERLAND
COUNTY, and HOLY SPIRIT
HOSPITAL,

Defendants.

JURY TRIAL DEMANDED

NO.: 1:CV-01-0930

HONORABLE YVETTE KANE

SPECIAL VERDICT QUESTIONS

Plaintiff v. Cumberland County (Constitutional Claim)

1. Were the actions of the County deliberately indifferent to Decedent
to deprive him of a constitutional right?

Yes _____ No _____

(If your answer is "no," then proceed to Question 4. If you answer "yes" to
Question 1, then proceed to Question 2.)

2. Were actions taken by the County done pursuant to a custom or policy of the County which resulted in the deprivation of Decedent's constitutional rights?

Yes _____ No _____

(If your answer is "no," then proceed to Question 4. If you answer "yes" to Question 2, then proceed to Question 3.)

3. Were said actions of the County the cause of the deprivation of Decedent's constitutional rights?

Yes _____ No _____

(If your answer is "no," then proceed to Question 4. If you answer "yes" to Question 3, then proceed to Question 15.)

Plaintiff v. Holy Spirit Hospital (Constitutional Claim)

4. Was HSH a state actor in providing care for the Decedent?

Yes _____ No _____

(If your answer is "no," then proceed to Question 8. If you answer "yes" to Question 4, then proceed to Question 5.)

5. Were the actions of HSH deliberately indifferent to Decedent to deprive him of a constitutional right?

Yes _____ No _____

(If your answer is "no," then proceed to Question 8. If you answer "yes" to Question 5, then proceed to Question 6.)

6. Were the actions taken by HSH done pursuant to a custom or policy of HSH which resulted in the deprivation of Decedent's constitutional rights?

Yes _____ No _____

(If your answer is "no," then proceed to Question 8. If you answer "yes" to Question 6, then proceed to Question 7.)

7. Were said actions of HSH the cause of the deprivation of Decedent's constitutional rights?

Yes _____ No _____

(If your answer is "no," then proceed to Question 8. If you answer "yes" to Question 7, then proceed to Question 8.)

Plaintiff v. Holy Spirit Hospital (State Law Claim)

8. Did HSH owe Decedent a duty of care?

Yes _____ No _____

(If your answer is "no," then please sign the form and return to the courtroom. If you answer "yes" to Question 8, then proceed to Question 9.)

9. Were the actions of HSH grossly negligent in relation to any duty of care for the Decedent?

Yes _____ No _____

(If your answer is "no," then please sign the form and return to the courtroom. If you answer "yes" to Question 9, then proceed to Question 10.)

10. Were the actions of HSH a substantial factor in causing Decedent's death?

Yes _____ No _____

(If your answer is "no," then please sign the form and return to the courtroom. If you answer "yes" to Question 10, then proceed to Question 11.)

11. Did Decedent assume the risk of his harm by failing to take his prescribed medication and/or take illegal controlled substances?

Yes _____ No _____

(If your answer is "no," then please sign the form and return to the courtroom. If you answer "yes" to Question 11, then proceed to Question 12.)

12. Was the Decedent comparatively/contributorily negligent in failing to take his prescribed medication and/or taking illegal controlled substances?

Yes _____ No _____

(If your answer is "no," then please sign the form and return to the courtroom. If you answer "yes" to Question 12, then proceed to Question 13.)

13. If you (the jury) find the Decedent was comparatively/contributorily negligent, was Decedent's negligence a substantial factor in causing Decedent harm?

Yes _____ No _____

(If your answer is "no," then please sign the form and return to the courtroom. If you answer "yes" to Question 13, then proceed to Question 14.)

14. Taking the combined negligence that was a substantial factor in bringing about Plaintiff's harm as 100%, what percentage of that negligence was attributable to Defendants, and what percentage was attributable to the Plaintiff?

Defendants _____ %

Plaintiff _____ %

Total 100%

(If Plaintiff's causal negligence is greater than 50%, then please sign the form and return to the courtroom. Otherwise, please go to Question 15, without taking your answer to Question 14 into account in any way).

15. State the amount of damages, if any, sustained by the Plaintiffs as a result of the occurrence, without regard to and without reduction by the percentage of causal negligence, if any, that you have attributed to the Plaintiff.

Plaintiff \$ _____

JURY FOREPERSON

APPENDIX C

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA**

KEITH I. SCHORR and SUSAN
SCHORR, in their own right and
as personal representatives of the
Estate of RYAN K. SCHORR,
Plaintiffs,

v.

WEST SHORE REGIONAL POLICE
DEPARTMENT, HOWARD
DOUGHERTY, CUMBERLAND
COUNTY, and HOLY SPIRIT
HOSPITAL,

Defendants.

: JURY TRIAL DEMANDED

: NO.: 1:CV-01-0930

: HONORABLE YVETTE KANE

CERTIFICATIONS

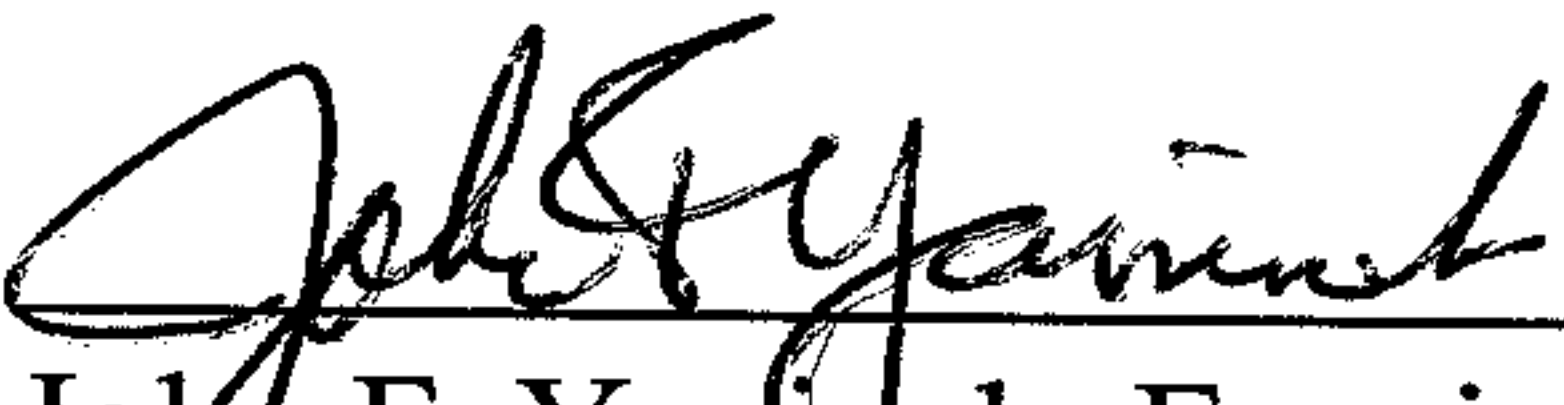
The undersigned certifies that the persons with settlement authority on behalf of Holy Spirit Hospital and Cumberland County have been advised of the requirements of Local Rule 16.2.

The undersigned also certifies that counsel for all parties have met as required by Local Rule 30.10. Trial depositions have not been taken. Therefore, counsel have not

yet reviewed said depositions or videotapes in an effort to eliminate and resolve objections.

Respectfully submitted,

METTE, EVANS & WOODSIDE

By: 
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P. O. Box 5950
Harrisburg, PA 17110-0950
(717) 232-5000

Date: May 14, 2003

Attorneys for Defendants Holy Spirit
Hospital and Cumberland County

CERTIFICATE OF SERVICE

I, JOHN F. YANINEK, ESQUIRE, hereby certify that I am serving a copy of the foregoing document upon the person(s) and in the manner indicated below, which service satisfies the requirements of the Federal Rules of Civil Procedure, by depositing a copy of same in the United States Mail at Harrisburg, Pennsylvania, with first-class postage, prepaid, as follows:

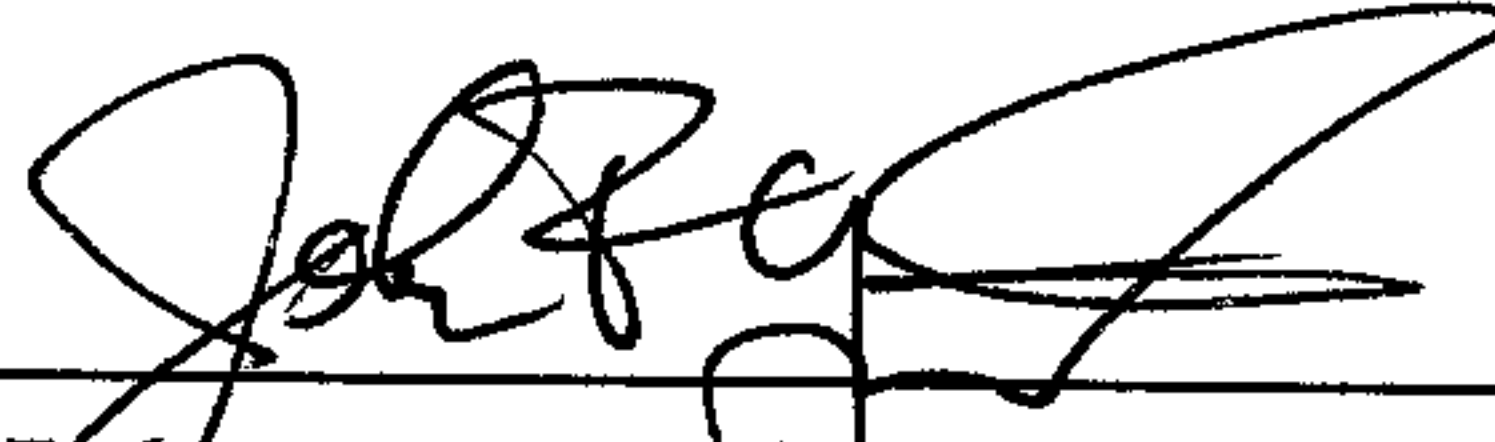
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Harrisburg, PA 17110-0950
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Date: May 14, 2003

Attorneys for Defendants Holy Spirit
Hospital and Cumberland County